Case 10-22026 Doc 94 Filed 08/11/11 Entered 08/11/11 17:34:54 Desc Main Document Page 1 of 4

UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS

)	
In Re:)	
RHONA JULIEN)	Chapter 13
)	Case No. 10-22026-WCH
Debtor)	

<u>DEBTOR'S OBJECTION TO AMENDED PROOF OF CLAIM FILED BY GMAC</u> <u>MORTGAGE, LLC</u>

NOW COMES Rhona Julien, the debtor in the above referenced proceeding, and hereby objects to the Amended Proof of Claim by GMAC Mortgage, LLC (hereafter "GMAC") filed in her case. As cause therefore, the debtor hereby states as follows:

- 1. On November 2, 2010, the debtor filed a petition for relief under Chapter 13 of the U.S. Bankruptcy Code.
- 2. In her bankruptcy schedules, the debtor duly listed her interest in real property located at 568 Eliot Street, Milton, Massachusetts as well as a mortgage on said property held by GMAC.
- 3. On March 10, 2011, GMAC filed a proof of claim in the debtor's case, asserting a secured claim in the amount of \$9,658.26 (pre-petition arrears) and a total claim of \$366,683.79.
- 4. On March 22, 2011, the deadline to file proofs of claims in this case for the debtor's creditors, including GMAC, expired.
- 5. On April 18, 2011, the debtor duly filed an objection to GMAC's proof of claim on the grounds that said claim sought amounts for escrow advances (\$1,323.55), bankruptcy attorney fees and costs (\$300.00), and property inspections fees (\$152.50) that were undocumented as well as clearly excessive, redundant, and improper.

- 6. On May 20, 2011, the Court sustained the debtor's objection to GMAC's proof of claim.
- 7. In that the Court has already sustained the debtor's objections to GMAC's proof of claim, specifically its claims for escrow advances, bankruptcy attorney fees and costs, and property inspections fees, GMAC is barred and estopped from recovering the same expenses for escrow advances and property inspection fees listed in its amended proof of claim.
- 8. The debtor objects to the claim of \$1,124.89 in uncollected late charges alleged by GMAC in its amended proof of claim on the ground that it is untimely. In this regard, the debtor observes that GMAC's original proof of claim did not include any amounts for uncollected late charges, though GMAC's amended proof of claim does include \$1,124.89 in uncollected late charges for the period of April, 2009 to August, 2010. In that GMAC's amended proof of claim was filed after the claims deadline of March 22, 2011, its claim for uncollected late fess, which could and should have been filed prior to the expiration of the deadline in its original proof of claim, is therefore time-barred.
- 9. The debtor further objects to the escrow shortage of \$378.98 in GMAC's amended proof of claim, as GMAC fails to provide any details as to the reason for the alleged shortage and when said shortage allegedly arose.

WHEREFORE, the debtor respectfully requests that this Court sustain her Amended Objection to Proof of Claim Filed by GMAC Mortgage, LLC and allow said claim in the amount of \$364,907.74 (total mortgage debt) and \$8,826.78 (arrearage claim).

Respectfully Submitted, Rhona Julien By her Attorney,

/s/ Mark W. Miller

Mark W. Miller: BBO# 634317 The Law Office of Mark W. Miller 11 Beacon Street, Suite #1100 Boston, MA 02108 (617) 248-0530 mmillerlaw@verizon.net

Dated: August 11, 2011

UNITED STATES BANKRUPTCY COURT DISTRICT OF MASSACHUSETTS

)	
In Re:)	
RHONA JULIEN)	Chapter 13
)	Case No. 10-22026-WCH
Debtor)	
)	

CERTIFICATE OF SERVICE

I, Mark W. Miller, hereby certify that a true and genuine copy of the attached Debtor's Objection to Amended Proof of Claim Filed by GMAC Mortgage, LLC was served upon each member of the below Service List by electronic or first class mail, postage prepaid on this 11th day of August, 2011.

_/s/ Mark W. Miller
Mark W. Miller

Service List

Rhona P. Julien 568 Eliot Street Milton, MA 02186

Carolyn Bankowski, Esq. Chapter 13 Trustee 180 Canal Street, 6th Floor P.O. Box 8250 Boston, MA 02114-0033

Office of the U.S. Trustee 10 Causeway Street, 11th Floor Boston, MA 02114

GMAC Mortgage, LLC c/o Amy N. Azza, Esq. Orlans Moran, PLLC P.O. Box 962169 Boston, MA 02196